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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of Part 97 of the Rules)
Governing the Amateur Radio)
Services to Grant Temporary)
Operating Privileges to Unlicensed)
Persons)

RM-8288

TO: Chief, Private Radio Bureau

COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED
ON PETITION FOR RULE MAKING

THE AMERICAN RADIO RELAY
LEAGUE, INCORPORATED

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SUMMARY

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, submits its comments in response to the Petition for Rule Making filed on or about June 28, 1993 by the Western Carolina Amateur Radio Society/VEC, Inc. (Petitioner).

The concept of unlicensed persons operating amateur stations, even temporarily, has been determined to be illegal by the Commission in the recent past. It is not only in violation of international treaty, it is also in violation of the Communications Act of 1934. The procedure suggested in the instant petition is open to significant abuse, and is not readily subject to Commission enforcement efforts. The better plan is to implement electronic application filing and processing procedures at the Gettysburg office, which the Commission is now working hard to do. That, alone, should reduce significantly any delay in issuing new amateur licenses after an examination, which is the sole problem that the instant petition is intended to address.

Therefore, the American Radio Relay League, Incorporated respectfully requests that the instant petition for rule making be denied pursuant to Section 1.401(e) of the Commission's Rules.

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TO: Chief, Private Radio Bureau

**COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED
ON PETITION FOR RULE MAKING**

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, by counsel and pursuant to Section 1.405(a) of the Commission's Rules [47 C.F.R. §1.405(a)], hereby respectfully submits its comments in response to the Petition for Rule Making filed on or about June 28, 1993 by the Western Carolina Amateur Radio Society/VEC, Inc. (Petitioner). The petition was placed on public notice July 8, 1993, by Report No. 1952, and thus these comments are timely filed. The petition proposes that the Commission permit unlicensed persons, who have successfully completed the requisite elements of an amateur radio examination administered by a volunteer examiner, to operate an amateur radio station while awaiting Commission action on an application for an amateur radio license. In response to the petition, the League states as follows:

I. Introduction

1. The idea of "instant licensing" in the Amateur Radio Service is not new. It is, rather, a concept that has been proposed

on previous occasions, in an effort to address what the petitioners have perceived as inordinate delays in Commission processing of license applications for newcomers to the Amateur Radio Service. A person who completes the requisite examination elements, indicating that one of the basic qualification requirements for obtaining an amateur radio license has been met, reasonably expects that his or her application for a new amateur radio license will be acted on by the Commission with dispatch. If the application is delayed for administrative reasons, related to manpower restrictions or otherwise at the Commission's Gettysburg office, there is an element of frustration for the newcomer to the Amateur Radio Service, and the Commission is plagued by telephone calls from the applicants, thus slowing service even more. The proposed solution is simply to let those persons go ahead and operate in the interim, while the application is being processed.

2. The problem is that the passage of an amateur radio examination through the VE program is not the only factor to be considered in determining whether an applicant for an amateur license. Neither the VE, nor the VEC, is in any position to determine whether the applicant possesses the basic qualifications to become a Commission licensee in the Amateur Radio Service or any other radio service. There is an absolute requirement, imposed by international treaty and Federal statute, that the Commission determine the basic qualifications of a Commission licensee prior to granting authorization to operate a radio station.

3. The goal of the petitioner in this instance is admirable, and a procedure that foreshortens the inherent delay between successful completion of the examination for a new amateur radio license and the issuance of that license to the applicant is desirable, if consistent with a Commission determination of the basic qualifications of that applicant. There is, on the near horizon, a procedure for electronic filing of applications for new and modified amateur radio licenses, however, and that procedure should significantly reduce both the Commission's effort in processing such applications, and the waiting time between successful completion of an examination and the issuance by the Commission of a new or modified amateur radio license. Under these circumstances, the instant petition should be dismissed without further action.

II. The Commission Cannot Legally Grant the Requested Relief

4. The instant petition seeks amendment of the Amateur Radio Service Rules to permit a successful examinee for a new amateur radio license to commence operating an amateur radio station prior to the processing of an FCC Form 610 by the Commission. The premise is that the person has qualified to do so by virtue of having successfully completed an amateur radio examination, without more. He or she would be permitted to operate the station immediately upon receiving a certificate of successful completion of the examination from a volunteer examiner, and could exercise the privileges of whatever license class that examinee has earned as an

initial matter. The proposal includes the suggestion that a specific call sign block would be set aside for this purpose, and that a call sign would be assembled using a combination of the prefix, a number, and the initials of the examinee.

5. In April of 1987, the Commission received a similar petition for rule making from one Frederic G. Hambrecht, and accorded file number RM-5924. That petition sought immediate operating privileges for successful examination candidates for Novice class amateur licenses. The Novice class license was then the principal entry-level class of amateur radio license. The examinations for Novice class licenses were at that time administered by Volunteer Examiners not in the VEC program. Just this year, the Commission has brought Novice examinations within the more formalized Volunteer Examiner program. All amateur examinations are now within the VEC program, which carries with it a high degree of integrity and organization.

6. The Commission dismissed RM-5924 by Order, DA-1853, released December 31, 1987, for several reasons. Principal among these was that "upon analysis, an instant licensing proposal appears contrary to the requirements of International Law." As support for this conclusion, the Commission cited¹ the Radio

¹ Not cited at the time, but perhaps more relevant was RR Number 2020, which states as follows:

No transmitting station may be established or operated by a private person or by any enterprise without a license issued in an appropriate form and in conformity with the provisions of these Regulations by the government of the country to which the station in question is subject.

Regulations (Geneva 1979) at RR Number 2736, which states as follows:

Administrations shall take such measures as they judge necessary to verify the operational and technical qualifications of any person wishing to operate the apparatus of an amateur station.

The intention of this regulation is clearly to obligate the administration to itself determine the qualifications of a person prior to permitting operation of the station. Such would not occur where the VEs, alone, have determined that the person has successfully completed the examination, but the Commission has had no opportunity to determine the basic qualifications of that person or the nature of his or her proposed station. For example, by permitting operation of an amateur station prior to licensing either the station or the operator, it would not be possible for the Commission to determine the environmental impact of the proposed station, or the basic character qualifications of the operator.

7. The Communications Act of 1934 is more specific than the Radio Regulations as to the inability of an unlicensed person to operate a radio station:

No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio...within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

47 U.S.C. §301

There are exceptions to this, but none are applicable to the Amateur Radio Service.

Section 303(1)(1) of the Communications Act gives the Commission the authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States. Section 307(a) of the Act states that The Commission, if public convenience, interest or necessity will be served thereby, subject to the limitations of the Communications Act, shall grant to any applicant therefor a station license provided for by the Act.

8. Section 308 of the Communications Act addresses applications for licenses. It permits the FCC to grant construction permits and licenses only upon written application received therefor by it. And, in the case of nonbroadcast services (such as amateur radio), where the Commission finds that it is not feasible because of an emergency to follow normal licensing procedure, the Commission can grant authorizations without formal application being filed with the Commission, but no authorization so granted can continue past the period of emergency or war requiring it.

9. All of the foregoing requires that the Commission determine the qualifications of an operator prior to issuance of a license. Further, unlicensed persons may not operate their own radio stations, either temporarily or otherwise. The only unlicensed operation permitted is in the event of emergency or war. Neither a station license nor an operator license can be granted without a Commission determination of basic qualifications of the licensee.

III. The Practical Difficulties Inherent In Temporary Operating Authority Outweigh The Benefits

10. As the Chief, Private Radio Bureau stated in his 1987 Order, at which time applications were processed at the Commission in 18 to 21 days, the application processing period is not unreasonable:

In view of the relatively short time that it takes us to process an application, the marginal benefits to be derived by authorizing successful Novice operator examinees temporary operating authority are outweighed by the disadvantages that could occur...Therefore, the initiation of a rule making proceeding by the full Commission is not warranted.

Order, DA 87-1853, at ¶ 6.

The "disadvantages" of the proposed temporary operating authority are obvious. Persons who have had licenses revoked or suspended (in the Amateur Service or any other radio service) would be able to take an amateur examination, pass it, and then be issued a certificate of successful completion of the examination, and commence operation immediately. A rule which prohibited such persons from exercising temporary operating authority would not be sufficient to preclude operation by those persons. Neither would it be possible to delegate to the examiner the obligation to determine any facts about the applicant to establish whether he or she possesses the basic qualifications to become a Commission licensee. That is a Commission function, and not one that can be delegated. Neither should already busy volunteer examiners be asked to make a determination of the propriety of temporary operating authority for any given individual.

11. Furthermore, allowing persons who have not been adjudicated eligible for licenses, and allowing them to use self-constructed call signs based on a formula, is open to serious abuse. Persons who have taken no examination whatsoever could simply construct a call sign and use it for a significant period of time, without any opportunity for detection or enforcement. The Commission would have no ready means of determining the location of interfering signals, or the bona fides of a particular station.

12. Temporary operating authority for newcomers to the Amateur Radio Service is not the same as, nor is it justified by, the authority of an existing licensee to operate his or her station with upgraded operating privileges immediately upon upgrading his or her license class, per section 97.9(b) of the Rules. In the case of a licensee who upgrades his or her license class, that person already possesses a license, and all of the statutory and treaty requirements will have been satisfied: the licensee's basic qualifications will have been previously adjudicated. Such is not the case with an unlicensed person. Whether an existing licensee can exercise additional privileges upon upgrade is wholly different from the issue of whether an unlicensed person who has successfully completed an examination is basically qualified to be a Commission licensee and should be permitted to operate an amateur station before that determination is made by the Commission.

13. In denying RM-5924, another reason stated by the Commission was that the wait for license application processing was not at that time significant. While since that time, and from time

to time, there have been periods where license application processing at the Commission's Gettysburg office has been significant (more than seven weeks), the wait for a new license application to be granted and a license issued is not inordinately long at the present time. There is thus not a substantial benefit to be gained by the temporary licensing proposal contained in the petition.

IV. Other Solutions Are Preferable

14. Other solutions to the delay issue exist. The Commission has recently permitted license applications in the Private Radio Services to be filed electronically. While this has not yet been implemented, it is based on a provision in the Telecommunications Authorization Act of 1982, Pub. L. No. 102-538, 106 Stat. 3533 (1992) at §204, which permitted signatures to be submitted on applications "in any manner or form, including by electronic means, as the Commission may prescribe by regulation". Id., §§ 204(b),(c). The Commission has implemented this by Order, 8 FCC Rcd. 2662 (1993). Though no specific procedures have yet been established, League representatives have met with Commission Gettysburg staff to discuss the same, and it should be implemented soon. Electronic filing of applications should radically reduce the staff time at Gettysburg in processing amateur Form 610 applications, and will reduce the delay in issuance of new licenses to applicants found qualified. This is a far better means of accommodating newcomers to the Amateur Radio Service than simply permitting unlicensed persons

to go on the air without a license, and without any record at the Commission of their existence.

V. Conclusion

15. The concept of unlicensed persons operating amateur stations, even temporarily, has been adjudicated to be illegal by the Commission in the recent past. It is not only in violation of international treaty, it is also in violation of the Communications Act of 1934. The procedure suggested in the instant petition is open to significant abuse, and is not readily subject to Commission enforcement efforts. The better plan is to implement electronic application filing and processing procedures at the Gettysburg office, which the Commission is now working hard to do. That, alone, should reduce significantly any delay in issuing new amateur licenses after an examination, which is the sole problem that the instant petition is intended to address.

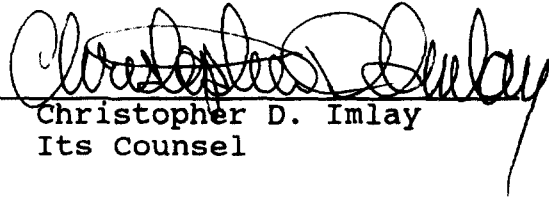
Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the instant petition for rule making be denied pursuant to Section 1.401(e) of the Commission's Rules.

Respectfully submitted,

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August 9, 1993

CERTIFICATE OF SERVICE

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that a copy of the Comments of the American Radio Relay League, Incorporated to Petition for Rule Making were mailed, via U. S. Mail, postage prepaid, this 9th day of August, 1993, to the offices of:

Mr. Raymond K. Adams
Vice President, Treasurer
Western Carolina Amateur
Radio Society/VEC, Inc.
5833 Clinton Hwy. Suite 203
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Margaret A. Ford